IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.MC.No. 295 of 2006()

CC.1433/2003 of JUDL. MAGISTRATE OF FIRST CLASS, KOTTAYAM

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PETITIONER: 3RD ACCUSED:

SAJAN VARGHESE,
PRINTER & PUBLISHER, MANGALAM DAILY
S.H. MOUNT P.O., KOTTAYAM.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: COMPLAINANT:

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1. SKANDA T. KUMAR,
S/O. SPENCER CHELLAIAH THURAISINGAM
ROODJR, BODPLSNYDORN 22, HOOFDDORP,
2135 NL, THE NETHERLANDS, NOW RESIDING AT 8A1,
ENTURY TOWERS, M.C. ROAD, KOTTAYAM.

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.SUNIL CYRIAC
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/11/2006, ALONG WITH CRMC NO. 3102 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NOS.295 & 3102 OF 2006

Dated this the 30th day of November, 2006.

ORDER

The common petitioner in these two Crl.M.Cs is the 3rd accused in a prosecution under Sections 499 & 500 I.P.C. The complainant/respondent herein complained that a campaign to defame him has been undertaken by the persons responsible for publishing the Mangalam daily. The petitioner is, without any dispute, the Managing Director of the said company and is admittedly the printer and publisher of the said daily. A series of articles/write ups were published against the complainant and it is the case of the complainant that such publication by the persons responsible for effecting such publication amount to the offence of defamation punishable under Section 500 I.P.C. The 1st accused is the Chief Editor, the 2nd accused is the editor and the petitioner herein is the printer and publisher of the said daily. There is a 4th accused who is not named, but who is arrayed as the 4th accused with the description of "The Staff Reporter, Mangalam, Kottayam". Who the staff reporter is, has not been strangely specified in the complaint. The learned Magistrate after following the procedure stipulated by law, has

taken cognizance of the offence against all the 4 accused persons. After taking cognizance, accused 2 & 3 have already entered appearance. The 1st accused is no more now, it is submitted. The 4th accused has not entered appearance. As the 4th accused is not any named person, service of summons on the 4th accused caused difficulties. At that stage, the learned Magistrate, it is seen, directed that the summons be handed over to the 3rd accused for service on the 4th accused. The petitioner, the 3rd accused has come before this Court with these Crl.M.Cs complaining about the taking of cognizance against him as also the direction issued to him to serve notice on the 4th accused, a person not specified by name.

2. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this Court in this petition under Section 482 Cr.P.C. Without any dispute, the petitioner is the printer and publisher. His responsibility for publication of the daily is not seriously disputed. Following the decision in **Mathew v. Abraham** [2002(3) KLT 282(SC)], notwithstanding the fact their Lordships in that case were considering specifically the nature of liability of a Managing Editor, Resident Editor or Chief Editor, I am satisfied that the prosecution against the

petitioner, admittedly the printer and publisher of the daily, does not deserve to be quashed at this stage. The petitioner must appear before the learned Magistrate and raise his contentions in the course of trial.

3. Coming to the cognizance taken against the 4th accused, an unspecified individual referred to as the staff reporter only, I find merit in the contention of the learned counsel for the petitioner that post cognizance investigation cannot be and must be frowned upon. The complainant has not specified which individual accused has committed the offence. An office like the "Staff reporter, Mangalam" cannot certainly be prosecuted. The complainant cannot certainly depend upon the services of the petitioner/the 3rd accused after cognizance has taken to identify the individual who had made the questionable report. I am in these circumstances, satisfied that the cognizance taken against the non specified indictee of "Staff reporter" deserves to be quashed. The complainant ought to have taken necessary steps prior to filing of the complaint or at least at the stage of enquiry under Section 202 Cr.P.C to make data available to court to specifically identify the person who is to stand trial as the 4th accused. That has not been done. The

cognizance taken against the 4th accused cannot be held to be justified. Though a specific prayer to that effect has not been made in these Crl.M.Cs, I am satisfied that the prosecution against the 4th accused, who remains unidentified and unspecified even now can be quashed under Section 482 Cr.P.C to facilitate early disposal.

4. In the result:

i) Crl.M.C.No.295 of 2006 is dismissed;

ii) Crl.M.C.NO.3102 of 2006 is allowed. Cognizance taken against the 4th accused is set aside. I may hasten to observe that the order passed in Crl.M.C.No.3102 of 2006 will not in any way fetter the powers of court at a later stage to take cognizance against any specified individual by invoking the powers under Section 319 Cr.P.C.

4. The learned counsel for the petitioner submits that unnecessary insistence on personal appearance of the petitioner is likely to cause great prejudice, hardship, loss and inconvenience to the petitioner. It is for the petitioner to apply for exemption before the learned Magistrate and I have no reason to assume that the learned Magistrate would not consider such application for exemption on merits and in accordance with

law. It has been repeated many times that unnecessary and ritualistic insistence on the personal appearance of an indictee need not be insisted unless sufficient reasons are there and the progress of the case requires such personal appearance of the indictee. In these circumstances, I am satisfied that no specific direction need be issued; but I observe that the petitioner can apply for exemption seeking appropriate orders on merits from the learned Magistrate.

R.BASANT
JUDGE

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